

Superseded 5/10/2016

13-14-204 Franchisor's obligations related to service -- Franchisor audits -- Time limits.

- (1) Each franchisor shall specify in writing to each of its franchisees licensed as a new motor vehicle dealer in this state:
 - (a) the franchisee's obligations for new motor vehicle preparation, delivery, and warranty service on its products;
 - (b) the schedule of compensation to be paid to the franchisee for parts, work, and service; and
 - (c) the time allowance for the performance of work and service.
- (2)
 - (a) The schedule of compensation described in Subsection (1) shall include reasonable compensation for diagnostic work, as well as repair service, parts, and labor.
 - (b) Time allowances described in Subsection (1) for the diagnosis and performance of warranty work and service shall be reasonable and adequate for the work to be performed.
- (3)
 - (a) In the determination of what constitutes reasonable compensation under this section, the principal factor to be considered is the prevailing wage rates being paid by franchisees in the relevant market area in which the franchisee is doing business.
 - (b) Compensation of the franchisee for warranty service work may not be less than the amount charged by the franchisee for like parts and service to retail or fleet customers, if the amounts are reasonable. In the case of a recreational vehicle franchisee, reimbursement for parts used in the performance of warranty repairs, including those parts separately warranted directly to the consumer by a recreational vehicle parts supplier, may not be less than the franchisee's cost plus 20%. For purposes of this Subsection (3)(b), the term "cost" shall be that same price paid by a franchisee to a franchisor or supplier for the part when the part is purchased for a nonwarranty repair.
- (4) A franchisor may not fail to:
 - (a) perform any warranty obligation;
 - (b) include in written notices of franchisor's recalls to new motor vehicle owners and franchisees the expected date by which necessary parts and equipment will be available to franchisees for the correction of the defects; or
 - (c) compensate any of the franchisees for repairs effected by the recall.
- (5) If a franchisor disallows a franchisee's claim for a defective part, alleging that the part is not defective, the franchisor at its option shall:
 - (a) return the part to the franchisee at the franchisor's expense; or
 - (b) pay the franchisee the cost of the part.
- (6)
 - (a) A claim made by a franchisee pursuant to this section for labor and parts shall be paid within 30 days after its approval.
 - (b) A claim shall be either approved or disapproved by the franchisor within 30 days after receipt of the claim on a form generally used by the franchisor and containing the generally required information. Any claim not specifically disapproved of in writing within 30 days after the receipt of the form is considered to be approved and payment shall be made within 30 days.
- (7) Warranty service audits of franchisee records may be conducted by the franchisor on a reasonable basis.
- (8) A franchisee's claim for warranty compensation may be denied only if:
 - (a) the franchisee's claim is based on a nonwarranty repair;
 - (b) the franchisee lacks material documentation for the claim;

- (c) the franchisee fails to comply materially with specific substantive terms and conditions of the franchisor's warranty compensation program; or
 - (d) the franchisor has a bona fide belief based on competent evidence that the franchisee's claim is intentionally false, fraudulent, or misrepresented.
- (9)
- (a) Any charge backs for warranty parts or service compensation and service incentives shall only be enforceable for the six-month period immediately following the date the payment for warranty reimbursement was made by the franchisor.
 - (b) Except as provided in Subsection (9)(c), all charge backs levied by a franchisor for sales compensation or sales incentives arising out of the sale or lease of a motor vehicle sold or leased by a franchisee shall be compensable only if written notice of the charge back is received by the franchisee within six months immediately following the sooner of:
 - (i) the date when the sales incentive program terminates; or
 - (ii) the date when payment for the sales compensation or sales incentive was made by the franchisor to the franchisee.
 - (c)
 - (i) Upon an audit, the franchisor shall provide the franchisee automated or written notice explaining the amount of and reason for a charge back.
 - (ii) A franchisee may respond in writing within 30 days after the notice under Subsection (9)(c)
 - (i) to:
 - (A) explain a deficiency; or
 - (B) provide materials or information to correct and cure compliance with a provision that is a basis for a charge back.
 - (d) A charge back:
 - (i) may not be based on a nonmaterial error that is clerical in nature; and
 - (ii)
 - (A) shall be based on one or more specific instances of material noncompliance with the franchisor's warranty compensation program or sales incentive program; and
 - (B) may not be extrapolated from a sampling of warranty claims or sales incentive claims.
 - (e) The time limitations of this Subsection (9) do not preclude charge backs for any fraudulent claim that was previously paid.